

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

THIS DOCUMENT RELATES TO ALL
CLASS ACTIONS

)
) MDL No. 1456
)

) CIVIL ACTION: 01-CV-12257-PBS
)

) Judge Patti B. Saris
)
)
)

**DECLARATION OF STEVE W. BERMAN IN SUPPORT OF PLAINTIFFS' MOTION
FOR LEAVE TO JOIN PIPEFITTERS LOCAL 537 TRUST FUNDS AS A PLAINTIFF
AND PROPOSED CLASS REPRESENTATIVE**

I, Steve W. Berman duly declares as follows:

1. I am one of the attorneys for Plaintiffs in this matter. This declaration explains (i) why Pipefitters Local did not join the suit on October 17, 2005, and (ii) Plaintiffs' efforts to obtain Defendants' agreement on this addition.

2. Plaintiffs had been in discussions with Pipefitters Local shortly before filing of the Third Amended Master Consolidated Class Action Complaint on October 17, 2005 ("TAC"). In contrast to the process associated with being retained and obtaining approval of individual class representatives, the TPP process is much more involved and time consuming. TPPs have a due diligence process that requires significant lead time to evaluate potential legal action. This process includes formal legal review and presentations to governing boards, whose approval is required to authorize action. Consequently, no Massachusetts representatives for Class 3 could be added to the case on or before the Court's October 17, 2005, deadline, although Plaintiffs had been intensely engaged in ongoing discussions with, and data analysis for, several Massachusetts-based TPPs before that date, including the Pipefitters Local. Pipefitters Local

indicated that it needed additional time in order to complete the due diligence process, has completed that process and now wishes to join the case.

3. On November 17, 2005, Plaintiffs sought Defendants' agreement to add the Pipefitters Local via a proposed stipulation that (i) called for Pipefitters Local to provide documentation that it reimbursed based on AWP within one week of filing an addendum to the complaint; (ii) provided Defendants with 21 days to depose Pipefitters Local on issues of typicality; and (iii) authorized each side to file a 5-page additional brief to supplement the briefing authorized in the Court's Class Order. The intent behind this proposal, which is reflected in my November 17, 2005, letter to Scott Wise, which is attached hereto as Exhibit A, was to keep the Track One additional certification proceedings on track, notwithstanding the addition of the Pipefitters Local. Defendants rejected this proposal. Thus, Plaintiffs have conferred with Defendants and attempted in good faith to resolve this issue as required by Local Rule 7.1(2).

4. In addition, Plaintiffs have also notified Defendants that Blue Cross of Massachusetts has decided it too will seek to represent Classes 2 and 3. *See* Letter to Scott Wise attached hereto as Exhibit B.

Further the declarant sayeth not. I certify under penalty of perjury that the foregoing is true and correct. Executed this the 29th day of November, 2005.

/s/ Steve W. Berman
STEVE W. BERMAN

Exhibit A



HAGENS BERMAN
SOBOL SHAPIRO LLP

STEVE W. BERMAN
DIRECT • (206) 224-9320
STEVE@HBSSLAW.COM

November 17, 2005

Via E-Mail

Mr. D. Scott Wise
Davis Polk & Wardwell
450 Lexington Avenue
New York, New York 10017

Re: Pharmaceutical Industry Average Wholesale Price Litigation

Dear Scott:

This is to advise the Track 1 defendants that Pipefitters Local 537 Trust Funds ("Pipefitters"), after having become aware of the August 16, 2005 Order, and in light of various communications from defense counsel regarding the need for a plaintiff from Massachusetts, will seek to become a class representative for the Class 2 and Class 3 subclasses. Pipefitters is a Massachusetts based TPP.

Plaintiffs propose that we stipulate to the following:

- (a) Pipefitters will be deemed to be a plaintiff and plaintiffs will file an addendum to the complaint containing plaintiff allegations regarding BCBS.
- (b) Pipefitters will provide documentation that it reimbursed based upon AWP within one week of the filing of the addendum.
- (c) Defendants will have 21 days to depose Pipefitters thereafter on issues of typicality.
- (d) Each side can file a 5-page additional brief to supplement the schedule in VII.5 of the August 16, 2005 Order.

Please get back to us within 48 hours.

ATTORNEYS AT LAW

T 206.623.7292 F 206.623.0594

SEATTLE LOS ANGELES CAMBRIDGE PHOENIX CHICAGO

www.hagens-berman.com

Mr. D. Scott Wise
November 17, 2005
Page 2

Sincerely,

HAGENS BERMAN SOBOL SHAPIRO LLP

A handwritten signature in black ink, consisting of a stylized 'S' followed by a long horizontal line that tapers off to the right.

Steve W. Berman

SWB:gm
cc: Counsel via Lexis

Exhibit B



STEVE W. BERMAN
DIRECT • (206) 224-9320
STEVE@HBSSLAW.COM

HAGENS BERMAN
SOBOL SHAPIRO LLP

November 14, 2005

Via E-Mail

Mr. D. Scott Wise
Davis Polk & Wardwell
450 Lexington Avenue
New York, New York 10017

Re: Pharmaceutical Industry Average Wholesale Price Litigation

Dear Scott:

This is to advise the Track 1 defendants that Blue Cross/Blue Shield of Massachusetts ("BCBS"), after having become aware of the August 16, 2005 Order, will become a class representative for the Class 2 and Class 3 subclasses.

Plaintiffs propose that we stipulate to the following:

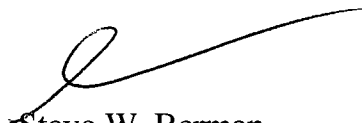
- (a) BCBS will be deemed to be a plaintiff and plaintiffs will file an addendum to the complaint containing plaintiff allegations regarding BCBS.
- (b) BCBS will provide documentation that it reimbursed based upon AWP within one week of the filing of the addendum.
- (c) Defendants will have 21 days to depose BCBS thereafter on issues of typicality.
- (d) Each side can file a 5-page additional brief to supplement the schedule in VII.5 of the August 16, 2005 Order.

Please get back to us within 48 hours.

Mr. D. Scott Wise
November 14, 2005
Page 2

Sincerely,

HAGENS BERMAN SOBOL SHAPIRO LLP



Steve W. Berman

SWB:gm

cc: Co-Lead Counsel
Blue Cross/Blue Shield of Massachusetts